

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 17 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0170
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MICHAEL HAYES NASTIUK,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20090380

Honorable Robert Duber II, Judge

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

H O W A R D, Chief Judge.

¶1 Appellant Michael Nastiuk was charged with possession of marijuana for sale, a class two felony, and possession of drug paraphernalia, a class six felony. Pursuant to Nastiuk's waiver of jury trial and his submission of stipulated evidence to the trial court, the court found him guilty of both offenses. *See* A.R.S. §§ 13-3405(A)(2), (B)(6), 13-3415. The court also found Nastiuk had a historical prior felony conviction and sentenced him to concurrent, mitigated prison terms, the longer of which is six years, with credit for 222 days served. Counsel has filed a brief in compliance with *Anders v.*

California, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has thoroughly reviewed the record and has found no arguable issues to raise on appeal. She asks this court to search the record for fundamental error. Nastiuk has not filed a supplemental brief.

¶2 Viewed in the light most favorable to sustaining the court’s findings of guilt, the evidence was sufficient to support those findings. *Cf. State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999) (jury verdicts). In November 2008, after Nastiuk’s vehicle was stopped for a traffic violation, a trained police dog alerted a Gila County sheriff’s deputy to the blanket-covered item in the back seat, which revealed an ice chest containing ten pounds of “a green leafy substance.” Nastiuk later identified the substance as marijuana.

¶3 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Therefore, we affirm Nastiuk’s convictions and sentences.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge